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SUBJECT: 2008 US-Mongolia TIFA, Report I: Progress on Transparency Agreement

REF: A) Ulaanbaatar 0110, B) Ulaanbaatar 0050

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11. (SBU) SUMMARY: Mongolia and the United States held their fourth annual Trade and Investment Framework Agreement (TIFA) Talks on February 4, with the Mongolian side continuing its push for a Free Trade Agreement (FTA). Assistant U.S. Trade Representative (AUSTR) Tim Stratford explained that while the USG continues to explore ways to deepen US-Mongolia trade relations, it was not a propitious time to be ask Congress to approve an FTA. Stratford added that a US-Mongolia Transparency Agreement (UMTA) would be more achievable, and that this would sustain forward motion in the trade relationship. Other issues discussed included problems in Mongolia's mining sector and changes in Mongolia's legal environment for foreign investment. This cable reviews progress and follow-up activities related to UMTA. Septels will cover other TIFA issues. END SUMMARY.

12. (SBU) In Washington on February 4, Mongolia and the U.S. held their fourth annual TIFA Joint Council Meeting. AUSTR Stratford led a U.S. delegation that included representatives from the Departments of State, Commerce, Interior, Labor, and Agriculture, as well as the U.S. Trade Development Agency; Embassy Ulaanbaatar was represented by the DCM and Senior Commercial Specialist. Vice Minister of Industry and Trade (VM) Sodbaatar led the Mongolian delegation, made up of Mongolians from the Ministry of Foreign Affairs and the General Customs Authority of Mongolia. The VM opened the TIFA with the GOM's usual push for a free trade agreement. However, beyond the simple request to negotiate an FTA, the VM's arguments lacked the usual lengthy justifications for an FTA that have typified the last three TIFAs.

13. (SBU) AUSTR Stratford reminded the GOM that at the previous year's TIFA, USTR had promised to consider concrete steps to deepen the US-Mongolia trade relationship, short of a commitment to an FTA. The fruit of these efforts was a request in June 2007 to the GOM that it consider negotiating a UMTA, which included a copy of the Korean-US Free Trade Agreement's Transparency Chapter (KORUS TA) to use as a conceptual model of the sort of agreement we were proposing to negotiate (ref B). Both this initial proposal and subsequent

communications have made clear that the KORUS TA was meant as a reference point for UMTA talks, as USTR recognizes that Mongolian circumstances differ from those in the ROK. However, AUSTR regretted any statements that might have led the GOM to think that the USTR was imposing the KORUS TA on Mongolia without allowing for Mongolian circumstances and capacities. He repeated that the initial request was not a formal proposal but a way to begin discussions on the issue. He stated that USTR should have answered GOM concerns by offering a more thorough briefing to the GOM regarding U.S. intentions for proposing a stand-alone TA. AUSTR regretted that these lapses had stalled progress toward the UMTA.

14. (SBU) AUSTR Stratford explained that USTR continues to actively seek ways to deepen the US-Mongolia trade relationship. However, in the current environment, asking Congress for additional FTA authority for Mongolia, or any other nation, was unlikely to be greeted positively. AUSTR added that although an FTA remains an unlikely outcome, a UMTA would more obtainable and would keep momentum going in the trade relationship.

15. (SBU) AUSTR Stratford suggested that the bilateral trade relationship would move forward under a "step-by-step approach," which would, over time, lead to a closer trade relationship. In that light, we should consider working on agreements that can be negotiated by the respective governments without immediate recourse to legislative review. For example, we might not discuss tariff rates, as that requires Congressional approval, whereas a UMTA would not. USTR concluded that the approach of identifying, negotiating, and agreeing on various elements of model FTAs would increase the relative attractiveness of Mongolia as USG in the future, with Trade Promotion Authority renewed, considers potential FTA partners.

Why this approach to a TA?

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16. (SBU) The VM asked if the approach outlined was typical of our FTA processes. The GOM was concerned that this approach would be too unconventional to lead to an FTA down the road. AUSTR explained that the approach features both traditional and innovative elements.

Traditionally, much exploratory work/talk is done by the negotiating parties before any FTA is publicly launched and Congressional approval sought. Discussing hard issues before talks go public allows both sides to settle sensitive disputes discreetly.

After many meetings with the trade partner to iron out mutually acceptable positions, USTR takes the results of the discussions to an USG Inter-Agency review, where all departments/agencies can consider what has been proposed, suggest modifications, and ultimately sign off on the process and its results.

17. (SBU) AUSTR then advised that the next step was to identify what TA concepts work and don't work in the Mongolian context. Then, in light of GOM observations, USTR could explain its positions, methods, motives and approaches. Based on this dialogue, we could then decide whether enough commonality exists between the U.S. and Mongolia to proceed to a more formal set of talks leading to a formal UMTA. USTR observed that this approach -- the soft way to an agreement -- involves dialogue, not dictation. Assuming we reach commonality, the USTR could go the USG Inter-Agency group with a report that the USG should move on an UMTA.

18. (SBU) USTR concluded that a stand-alone UMTA is a precedent-setting approach to trade agreements, and that this approach has not been widely publicized because it is new. USTR indicated that it would like to pursue it with GOM in a discreet fashion before wide-scale public dissemination. Given the current impediments to FTAs, USTR observed that that the unique approach being developed for the Mongolian UMTA (and follow on trade agreements) might become the model for trade relations between the U.S. and other nations.

19. (SBU) VM Sodbaatar responded that the UMTA TA proposal matched GOM aims generally; and so, the GOM would consider UMTA. The VM explicitly said that the GOM considered the USTR'S step-by-step approach the correct way to proceed. He further noted that early

confusion over the KORUS TA had been replaced with understanding that the KORUS TA is a part of any FTA, and that USTR is offering it as a first step toward an FTA. In that respect, the VM expressed a desire to learn about other nations' experiences with TAs and TIFAs, to ensure that Mongolia is in line with the approaches USTR employs with the other trade partners of the U.S. (Comment: The GOM remains wary of this process, fearing it may be nothing more than a method to reject Mongolia's FTA ambitions. However, contacts at MIT were enthralled by the image of Mongolia being on the cutting edge of trade-policy formulation. End Comment.)

¶10. (SBU) The VM acknowledged as correct USG observations that the US Congress, whose approval would be required for an FTA, was not supporting additional FTAs at this time. However, the VM reminded USTR that the GOM would probably have to seek the approval of Mongolia's Parliament for an UMTA, although the GOM could negotiate such a deal without parliamentary approval. The VM further recognized that a US-Mongolia FTA was not yet ready for public discussion, and that the GOM did not want to move too fast and run the risk of raising unrealistic expectations.

¶11. (SBU) The VM then asked for a more specific set of benchmarks for the step-by-step process conceived by USTR. Specifically, the VM asked what, after the TA, were the next steps. He opined that knowing these precise steps would allow the GOM to plan near-, mid-, and long-term approaches to the US-Mongolia bilateral trade relationship. He added that such detailed planning would make the approach proposed by USTR more palatable to the Mongolian people and Parliament.

¶12. (SBU) AUSTR observed that it would be difficult to set a firm schedule for progress, but that the participants should take a positive attitude. He amplified that participants should not seek

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in the UMTA process a precise road map to an FTA; rather, a mutual compass, guiding us in that direction. Overall, AUSTR concluded that if the sides could quickly agree to and implement an UMTA; it might be possible to move to the next agreement.

Next Steps on UMTA Proposed at TIFA

¶13. (SBU) AUSTR expressed disappointment at the lack of progress on the TA before the 2008 TIFA, but hoped that we could make significant progress before Mongolia's next summer holiday season, Naadam. To that end, AUSTR proposed that the USG and the GOM hold one or more digital video conferences (DVC) in March, in which Mongolia could present its views on an UMTA. AUSTR invited the GOM to ask questions regarding TAs, and to actively examine contradictions between provisions in the KORUS TA and Mongolian practices, capacities and expectations. Ideally, this dialogue would yield a common set of principles about UMTA. Assuming this commonality, USTR reps will visit Mongolia to review the finer points of the UMTA, most likely in May or June 2008. Then USTR would prepare a draft UMTA for GOM review. Working groups would negotiate the specific points, and USTR would meet with the GOM as positions firm up. Finally, with an UMTA in sight, USTR would seek USG Inter-Agency concurrence, and MIT would do the same with its GOM sister ministries.

Following an UMTA

¶14. (SBU) AUSTR Stratford noted that once we have jointly negotiated an UMTA and begun implementation, we can consider a new FTA chapter for discussion in much the same pattern used for the UMTA. We will review current FTA models for the next step. This could be an agreement on Intellectual Property rights, Competition law, etc.

Slow progress on UMTA since the February 2008 TIFA

¶15. (SBU) USTR proposed and the VM accepted a mid-March date for the first DVC dedicated to advancing UMTA. The Mongolians said that

since October 2007, they had been toying with the creation of a joint ministerial "Task Force Team" (TFT) dedicated to reviewing the KORUS TA for the initial discussions. This TFT would then serve as primary GOM negotiating body for UMTA. The Ministries of Industry and Trade, Foreign Affairs, Justice and Finance would provide personnel for the TFT, with Industry and Trade taking the lead. By TIFA 2008, MIT counterparts had informed us that they had unofficially identified the individuals who would serve on the TFT, although the group had not yet met, pending ministerial approval and the outcome of the 2008 TIFA. (Note: Per ref A, the Mongolians explained that they planned to continue the TFT after UMTA had been negotiated, as the GOM recognized that it would need a more or less permanent intra-governmental structure to coordinate internal GOM responses to bilateral trade issues. End note.)

¶16. (SBU) However, these apparently good intentions and concepts have been stymied by inter-ministerial squabbling that has slowed progress on the initial stages of UMTA. As it turned out, this turf war was being fought long before the UMTA was suggested, but the prospect of a specific agreement in the offing had brought the issue to a boil. The Ministry of Foreign Affairs (MFA) asserted that it controlled all bilateral international agreements, while MIT asserted that it had the lead (and the expertise) on trade-related issues. Technically, MFA had the right to make this argument, even though MIT noted that MFA lacked any practical ability to perform the task. The dispute percolated until the end of February, at which point cooler heads suggested that MFA and MIT assume joint responsibility for TFT. A decree was prepared for joint signature by the respective ministers, which languished on their respective desks for the last couple of weeks, at which point Foreign Minister Oyun agreed to the deal without signing the decree, deferring to Industry and Trade Minister Narankhuu, who took an additional week to sign off, finally doing so on March 28. (Note: Post, at the

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request of MIT contacts, gently reminded Narankhuu, through his personal advisor, of MIT's commitment to the UMTA process, and of the need to sign the decree to allow the TFT to begin its analysis and review of KORUS TA. End note.)

¶17. (SBU) The GOM has formally empowered its TFT, which has since deliberated on UMTA and provided comments to post, which has forwarded them on to USTR, in advance of the UMTA DVC, which we hope will occur in late April or early May.

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